In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 299

MRS. CHARLES JARVIS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

A collision of the towboat *Natchez* with a Mississippi River bridge, occurring in 1948, resulted in the sinking of that vessel and the injury and death of members of its crew. The *Natchez* was the property of the former Inland Waterways Corporation, a wholly owned agency of the federal government. Following the accident, the government filed a petition in admiralty for exoneration from or limitation of liability. That petition expressly alleged that all the

deceased or injured crewmen were government employees entitled to the benefits of the Federal Employees Compensation Act, 5 U.S.C. 751 *ff.*, and that steps had been taken to provide the appropriate compensation benefits.

Petitioners, dependents of the injured seamen seeking to recover damages allegedly suffered as a result of the accident, asserted claims against the United States under the Jones Act[1] in the admiralty proceeding. The district court, relying on *Patterson* v. *United States*, 359 U.S. 495, and *Johansen* v. *United States*, 343 U.S. 427, dismissed petitioners' claims on the ground that the Compensation Act remedy was their exclusive avenue of relief against the federal government. *Petition of United States (Towboat Natchez)*, 212 F. Supp. 214 (E.D. La.) (Pet. 9). The court of appeals affirmed, *sub nom. Jarvis* v. *United States*, 342 F.2d 799 (C.A. 5), adopting the opinion of the district court as its own (Pet. 15). On May 29, 1965, the Fifth Circuit denied petitioners' timely motion for rehearing (Pet. 14).

In *Johansen* and *Patterson*, this Court squarely held that for merchant seamen employed by the United States, as for other federal civilian employees, the Federal Employees Compensation Act provides the exclusive mode of redress against the government for injuries received in the course of employment. There is no conflict among the circuits on this point.[2] The

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[1] 46 U.S.C. 688.

[2] See, *e.g.*, *Mills* v. *Panama Canal Co.*, 272 F.2d 37 (C.A. 2), certiorari denied, 362 U.S. 961; *Balancio* v. *United States*,

contention made in the instant petition—that prior to the 1949 amendments expressly declaring the Compensation Act an exclusive remedy,[3] injured federal merchant seaman could elect either Jones Act or Compensation Act relief against the government and that a purpose of the 1949 amendments was to preserve that election (Pet. 6)—was specifically rejected by the Court in *Johansen* v. *United States*, 343 U.S. 427, 435-441, where the *Johnson* case upon which petitioners rely[4] was also expressly disapproved, *Id.* at 439. And in *Patterson* v. *United States*, *supra*, the Court declined to reconsider *Johansen*, stating (359 U.S. at 496-497):

> If civilian seamen employed by the Government are to be accorded rights different from or greater than those which they enjoy under the Compensation Act, it is for Congress to provide them.

Petitioners' remaining contention—that the institution of the limitation proceeding in admiralty waived the government's defense that petitioners were restricted to their compensation remedy—is also without merit. *Petition of Spearin, Preston & Burrows*, 190 F.2d 684 (C.A. 2).[5]

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267 F.2d 135 (C.A. 2); *Sasse* v. *United States*, 201 F.2d 871 (C.A. 7); *Mandel* v. *United States*, 191 F.2d 164 (C.A. 3).

[3] 63 Stat. 854, 861, 5 U.S.C. 757(b).

[4] *Johnson* v. *United States*, 89 F. Supp. 65 (E.D. Va.), reversed, 186 F.2d 120 (C.A. 4).

[5] Petitioner's intimations to the contrary notwithstanding, the district court correctly noted that the government has consistently asserted that petitioners were restricted to their

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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compensation remedies. Most of the petitioners here have in fact already been accorded such relief (See 212 F. Supp. 216, n. 1, Pet. 12).

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